

STATE OF MAINE
SUPREME JUDICIAL COURT

AMENDMENTS TO THE
MAINE RULES OF CIVIL PROCEDURE

2008 Me. Rules 08

Effective: June 1, 2008

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure, are hereby adopted to be effective June 1, 2008.

The specific rules amendments are set forth below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule (7)(b)(1) of the Maine Rules of Civil Procedure is amended to adopt a new Sub-paragraph (C) to read as follows:

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial or under Rule 26(g), shall be made in writing, shall state with particularity the grounds therefor and the rule or statute invoked if the motion is brought pursuant to a rule or statute, and shall set forth the relief or order sought.

(A) Any motion except a motion that may be heard ex parte shall include a notice that matter in opposition to the motion pursuant to subdivision (c) of this rule must be filed not later than 21 days after the filing of the motion unless another time is provided by these Rules or set by the court. The notice shall also state that failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing. If the notice is not

included in the motion, the opposing party may be heard even though matter in opposition has not been timely filed.

(B) In addition to the notice required to be filed by subparagraph (1)(A) of this subdivision, a motion for summary judgment served on a party shall include a notice (i) that opposition to the motion must comply with the requirements of Rule 56(h) including specific responses to each numbered statement in the moving party's statement of material facts, with citations to points in the record or in affidavits filed to support the opposition; and (ii) that not complying with Rule 56(h) in opposing the motion may result in entry of judgment without hearing.

(C) A pre-judgment motion to decide a case on the merits, pursuant to Rule 12(b)(6) or Rule 56, and a post-judgment motion for relief, to modify, to reconsider, to enforce by contempt, for a new trial, or for a stay, pursuant to Rules 59, 60(b), 62, 66, or 80(k) shall be accompanied by a fee set in the Court Fees Schedule which shall be paid when the motion is filed. A pre-judgment motion to decide a case based on res judicata or any defense that is addressed in Rule 12 (b) (1), (2), (3), (4), or (5), is not subject to payment of a fee.

Advisory Note

This amendment to M.R. Civ. P. 7(b)(1) adopts a new subparagraph (C) to place motion filers on notice that certain motions must be accompanied by a filing fee set in the Court Fees Schedule. The amendment is adopted to limit confusion that has existed since filing fees for some motions were adopted in the past few years. At the same time, the Court Fees Schedule is being amended to adopt a new fee for pre-judgment motions to decide a case on the merits by a motion to dismiss or a motion for summary judgment. Fees are not required for pre-judgment motions based on res judicata, lack of personal or subject matter jurisdiction, improper venue, or improper service of process, as a motion addressing one of these grounds does not reach the factual or legal merits of the claim asserted.

2. Rule 55 of the Maine Rules of Civil Procedure is amended to adopt a new Subdivision (e) to read as follows:

(e) Collections Fee. A request or motion for a default that seeks a judgment for a sum certain, or for a sum that can, by computation of costs and interest, be made certain, shall be accompanied by a fee set in the Court Fees Schedule which shall be paid when the request or motion is filed. The fee payment requirement shall apply only when a judgment of \$10,000 or more is sought.

Advisory Note

This amendment to Rule 55 complements the amendment to Rule 7(b)(1)(C) and is designed to assure that in foreclosure and other major debt collection matters, responsibility for payment of the fee for a motion to decide a case is not avoided by a practice of use of a default to obtain a final judgment. Major debt collection matters are those with a requested judgment of \$10,000 or more.

3. This amendment is effective June 1, 2008.

Such rules as thus adopted and amended shall be recorded in the Maine Reporter.

Dated: April 10, 2008

_____/s/
LEIGH I. SAUFLEY
Chief Justice

_____/s/
ROBERT W. CLIFFORD
Associate Justice

_____/s/
DONALD G. ALEXANDER
Associate Justice

/s/

JON D. LEVY
Associate Justice

/s/

WARREN M. SILVER
Associate Justice

/s/

ANDREW M. MEAD
Associate Justice

/s/

ELLEN A. GORMAN
Associate Justice

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